

The Gazette of India

EXTRAORDINARY

PART II—Section 2

PUBLISHED BY AUTHORITY

No. 65] NEW DELHI, MONDAY, DECEMBER 20, 1954

/ LOK SABHA

The following Bills were introduced in the Lok Sabha on 20th December, 1954 :—

BILL No. 64 of 1954

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Fifth Year of the Republic of India as follows:—

1. Short title.—This Act may be called the Constitution (Fourth Amendment) Act, 1954.

2. Amendment of article 31.—In article 31 of the Constitution, for clause (2), the following clauses shall be substituted, namely:—

“(2) No property shall be compulsorily acquired or requisitioned by the State save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property by the State, notwithstanding that it deprives any person of his property”.

3. Amendment of article 31A.—In article 31A of the Constitution,—

(a) for clause (1), the following clause shall be, and shall be deemed always to have been, substituted, namely:—

“(1) Notwithstanding anything contained in article 13, no law providing for—

(a) the acquisition by the State of any estate or of any rights therein, or

(b) the extinguishment or modification of any rights in estates or in agricultural holdings, or

(c) the maximum extent of agricultural land that may be owned or occupied by any person and the disposal of any agricultural land held in excess of such maximum, whether by transfer to the State or otherwise, or

(d) the acquisition or requisitioning of any immovable property for the relief or rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan, or

(e) the acquisition or requisitioning for a public purpose of any land, buildings or huts declared in pursuance of law to constitute a slum or of any vacant or waste land, or

(f) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(g) the transfer of any undertaking, wholly or in part, from one company to another or the amalgamation of two or more companies either in the public interest or in order to secure the proper management of the undertaking or of any of the companies, or

(h) the extinguishment or modification of any rights of managing agents, managing directors, directors, managers or shareholders of companies, or

(i) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or for the purpose of supplying power, light or water to the public, or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by, article 14, article 19 or article 31:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.”; and

(b) in sub-clause (b) of clause (2),—

(i) after the words “an estate” the words “or agricultural holding” shall be, and shall be deemed always to have been, inserted; and

(ii) after the word “tenure-holder”, the words “*raiyat*, *under-raiyat*” shall be, and shall be deemed always to have been, inserted.

4. Amendment of article 305.—For article 305 of the Constitution, the following article shall be substituted, namely:—

“305. Saving of existing laws and laws providing for State monopolies.—Nothing in articles 301 and 303 shall affect the provisions of any existing law; and nothing in article 301 shall affect the operation of any law made before the commencement of the Constitution (Fourth Amendment) Act, 1954 in so far as it relates to, or prevent Parliament or the Legislature of a State from making any law relating to, any such matter as is referred to in sub-clause (ii) of clause (6) of article 19.”.

5. Amendment of the Ninth Schedule.—In the Ninth Schedule to the Constitution, after entry 13, the following entries shall be added, namely:—

“14. The Bihar Displaced Persons Rehabilitation (Acquisition of Land) Act, 1950 (Bihar Act XXXVIII of 1950).

15. The United Provinces Land Acquisition (Rehabilitation of Refugees) Act, 1948 (U.P. Act XXVI of 1948).

16. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (Act LX of 1948).

17. Sections 52A to 52G of the Insurance Act, 1938, as inserted by section 42 of the Insurance (Amendment) Act, 1950” (Act XLVII of 1950).

18. The Railway Companies (Emergency Provisions) Act, 1951 (Act LI of 1951).

19. Chapter III-A of the Industries (Development and Regulation) Act, 1951 as inserted by section 13 of the Industries (Development and Regulation) Amendment Act, 1953 (Act XXVI of 1953).”.

STATEMENT OF OBJECTS AND REASONS

This Bill seeks to amend articles 31, 31A and 305 of, and the Ninth Schedule to, the Constitution.

2. Recent decisions of the Supreme Court have given a very wide meaning to clauses (1) and (2) of article 31. Despite the difference in the wording of the two clauses, they are regarded as dealing with the same subject. The deprivation of property referred to in clause (1) is to be construed in the widest sense as including any curtailment of a right to property. Even where it is caused by a purely regulatory provision of law and is not accompanied by an acquisition or taking possession of that or any other property right by the State, the law, in order to be valid according to these decisions, has to provide for compensation under clause (2) of the article. It is considered necessary, therefore, to re-state more precisely the State's power of compulsory acquisition and requisitioning of private property and distinguish it from cases where the operation of regulatory or prohibitory laws of the State results in “deprivation of property”. This is sought to be done in clause 2 of the Bill.

3. It will be recalled that the zamindari abolition laws which came first in our programme of social welfare legislation were attacked by the Interests affected mainly with reference to articles 14, 19 and 31, and that in order to put an end to the dilatory and wasteful litigation and place these laws above challenge in the courts, articles 31A and 31B and the Ninth Schedule were enacted by the Constitution (First Amendment) Act. Subsequent judicial decisions interpreting articles 14, 19 and 31 have raised serious difficulties in the way of the Union and the States putting through other and equally important social welfare legislation on the desired lines, e.g., the following:—

(i) While the abolition of zamindaris and the numerous intermediaries between the State and the tiller of the soil has been achieved for the most part, our next objectives in land reform are the fixing of limits to the extent of agricultural land that may be owned or occupied by any person, the disposal of any land held in excess of the prescribed maximum and the further modification of the rights of land owners and tenants in agricultural holdings.

(ii) The proper planning of urban and rural areas require the beneficial utilisation of vacant and waste lands and the clearance of slum areas.

(iii) In the interests of national economy the State should have full control over the mineral and oil resources of the country, including in particular, the power to cancel or modify the terms and conditions of prospecting licences, mining leases and similar agreements. This is also necessary in relation to public utility undertakings which supply power, light or water to the public under licences granted by the State.

(iv) It is often necessary to take over under State management for a temporary period a commercial or industrial undertaking or other property in the public interest or in order to secure the better management of the undertaking or property. Laws providing for such temporary transference to State management should be permissible under the Constitution.

(v) The reforms in company law now under contemplation, like the progressive elimination of the managing agency system, provision for the compulsory amalgamation of two or more companies in the national interest, the transfer of an undertaking from one company to another, etc., require to be placed above challenge.

It is accordingly proposed in clause 3 of the Bill to extend the scope of article 31A so as to cover these categories of essential welfare legislation.

4. As a corollary to the proposed amendment of article 31A, it is proposed in clause 5 of the Bill to include in the Ninth Schedule to the Constitution two more State Acts and four Central Acts which fall within the scope of sub-clauses (d) and (f) of clause (1) of the revised article 31A. The effect will be their complete, retrospective validation under the provisions of article 31B.

5. A recent judgment of the Supreme Court in *Saghir Ahmed v. the State of U.P.* has raised the question whether an Act providing for a State monopoly in a particular trade or business conflicts with the freedom of trade and commerce guaranteed by article 301, but left the question undecided. Clause (6) of article 19 was amended by the Constitution (First Amendment) Act in order to take such State monopolies out of the purview of sub-clause (g) of clause (1) of that article, but no corresponding provision was made in Part XIII of the Constitution with reference to the opening words of article 301. It appears from the judgment of the Supreme Court that notwithstanding the clear authority of Parliament or of a State Legislature to introduce State monopoly in a particular sphere of trade or commerce, the law might have to be justified before the courts as being "in the public interest" under article 301 or as amounting to a "reasonable restriction" under article 304(b). It is considered that any such question ought to be left to the final decision of the Legislature. Clause 4 of the Bill accordingly proposes an amendment of article 305 to make this clear.

NEW DELHI;

JAWAHARLAL NEHRU.

The 17th December, 1954.

BILL No. 58 OF 1954

A Bill to provide in pursuance of the International Convention signed at New York on the 9th day of May, 1950 for the suppression of immoral traffic in women and girls.

BE it enacted by Parliament in the Fifth Year of the Republic of India as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Suppression of Immoral Traffic in Women and Girls Act, 1954.

(2) It extends to the whole of India.

(3) This section shall come into force at once; and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "brothel" includes any house, room, or place or any portion of any house, room or place, which is used for purposes of prostitution for the gain of another person or for the mutual gain of two or more prostitutes;

(b) "girl" means a female who has not completed the age of eighteen years;

(c) "magistrate" means a District Magistrate, a Sub-Divisional Magistrate, a Presidency Magistrate, or a Magistrate of the first class specially empowered by the State Government, by notification in the Official Gazette, to exercise jurisdiction under this Act,

(d) "prescribed" means prescribed by rules made under this Act,

(e) "prostitute" means a female who offers her body for promiscuous sexual intercourse for hire, whether in money or in kind,

(f) "prostitution" means the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind,

(g) "protective home" means an institution, by whatever name called, in which women and girls may be kept in pursuance of this Act and includes—

(i) a shelter where women undertrials may be kept in pursuance of this Act, and

(ii) a corrective institution in which women and girls rescued and detained under this Act may be imparted such training and instruction and subjected to such disciplinary and moral influences as are likely to conduce to their reformation and the prevention of offences under this Act,

(h) "public place" means any place intended for use by, or accessible to, the public and includes any public conveyance,

(i) "special police officer" means a police officer appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purpose of this Act,

(j) "woman" means a female who has completed the age of eighteen years

3. Punishment for keeping a brothel or allowing premises to be used as a brothel—(1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

(2) Any person who—

(a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

(b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel,

shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

(3) Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) of sub-section (2) of any offence under that sub-section in respect of any premises, any lease or agreement under which such premises have been leased out or are held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.

4. Punishment for living on the earnings of prostitution.—(1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of a woman or girl shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

(2) Where any person is proved—

(a) to be living with, or to be habitually in the company of, a prostitute; or

(b) to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling her prostitution; or

(c) to be acting as a tout or pimp on behalf of a prostitute, it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1):

Provided that no such presumption shall be drawn in the case of the mother of a prostitute, if the mother is infirm or over the age of sixty years, or in the case of a son or daughter of a prostitute, if the son or daughter is below the age of twenty-one years.

5. Procuring, inducing or importing woman or girl for the sake of prostitution.—(1) Any person who—

(a) procures or attempts to procure a woman or girl, whether with or without her consent, for the purpose of prostitution; or

(b) induces a woman or girl to go from any place, with the intent that she may for the purpose of prostitution become the inmate of, or frequent, a brothel; or

(c) takes or attempts to take a woman or girl, or causes a woman or girl to be taken, from one place to another with a view to her carrying on, or being brought up to carry on, the business of prostitution; or

(d) causes or induces a woman or girl to carry on the business of prostitution;

shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than two years and also with fine which may extend to two thousand rupees, and if a male person, may in addition be liable to whipping.

(2) In the event of a second or subsequent conviction of an offence under this section a person shall be punishable with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

(3) An offence under this section shall be triable—

(a) in the place from which a woman or girl is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such woman or girl is made; or

(b) in the place to which she may have gone as a result of the inducement or to which she is taken or caused to be taken or an attempt to take her is made.

6. Detaining a woman or girl in premises where prostitution is carried on.—(1) Any person who detains any woman or girl, whether with or without her consent,—

(a) in any brothel, or

(b) in or upon any premises with intent that she may have sexual intercourse with any man other than her lawful husband, shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than two years and also with fine which may extend to two thousand rupees, and if a male person, shall in addition be liable to whipping.

(2) On a second or subsequent conviction for an offence under this section a person shall be punishable with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

(3) A person shall be presumed to detain a woman or girl in a brothel or in or upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there,—

(a) withholds from her any jewellery, wearing apparel, money or other property belonging to her, or

(b) threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person.

(4) Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellery, wearing apparel or other property alleged to have been lent or supplied to or for such woman or girl or to have been pledged by such woman or girl or for the recovery of any money alleged to be payable by such woman or girl.

7. Prostitution in or in the vicinity of public places.—(1) Whoever carries on prostitution in any premises which are within a distance of two hundred yards of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or District Magistrate in the manner prescribed, shall be punishable with imprisonment for a term which may extend to three months.

(2) Any person who--

(a) being the keeper of any public place knowingly permits prostitutes for purposes of their trade to resort to or remain in such place; or

(b) being the tenant, lessee, occupier or person in charge of any premises referred to in sub-section (1) knowingly permits the same or any part thereof to be used for prostitution; or

(c) being the owner, lessor or landlord of any premises referred to in sub-section (1), or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof may be used for prostitution, or is wilfully a party to such use,

shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

(3) On a subsequent conviction of an offence under this section a person shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to two hundred rupees.

8. Seducing or soliciting for purpose of prostitution.—Whoever, in any public place or within sight of, and in such manner as to be seen or heard from any public place, whether from within any building or house or not—

(a) by words, gestures, wilful exposure of her person (whether by sitting by a window or on the balcony of a building or house or in any other way), or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of, any person for the purpose of prostitution; or

(b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution,

shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year, and also with fine which may extend to five hundred rupees.

9. Seduction of a girl in custody.—(1) Any person who having the custody, charge or care of any woman or girl, causes or aids or abets the seduction for prostitution of that woman or girl shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years, and also with fine which may extend to one thousand rupees, and, if a male person, may in addition be liable to whipping.

(2) In the event of a second or subsequent conviction of an offence under this section a person shall be punishable with imprisonment which may extend to five years and also with fine which may extend to one thousand rupees.

10. Probation of good conduct and detention in protective home.—

(1) (a) A person convicted for the first time of any offence under sub-section (2) of section 3, or under section 4, section 5, section 7 or section 8 may, having regard to his age, character, antecedents and the circumstances in which the offence was committed, be released by the court before which he is convicted on probation of good conduct in the manner provided in sub-section (1) of section 562 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(b) A person convicted for the first time of any offence under section 7 or section 8 may, having regard to his age, character, antecedents and the circumstances in which the offence was committed, also be released with admonition in the manner provided for in sub-section (1A) of section 562 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(c) The provisions of sub-section (2), sub-section (3) and sub-section (4) of section 562 and section 563 and section 564 of the Code of Criminal Procedure, 1898 (Act V of 1898) shall apply to cases referred to in clause (a) and clause (b).

(2) A court convicting a woman or girl of any offence under section 7 or section 8 may, when it thinks fit, having regard to the age, character, antecedents of the woman or girl and the circumstances in which the offence was committed, pass in lieu of the sentence of imprisonment or fine, a sentence of detention in a protective home for a period of not less than two years and not more than five years.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898) or any other law for the time being in force, no person convicted under sub-section (1) of section 3 or under section 6 or section 9 shall be released on probation or with admonition.

11. Notification of address of previously convicted offenders.—(1)
When any person having been convicted—

(a) by a court in India of an offence punishable under this Act or punishable under section 363, section 365, section 366, section 366A, section 366B, section 367, section 368, section 370, section 371, section 372 or section 373 of the Indian Penal Code (Act XLV of 1860) with imprisonment for a term of two years or upwards; or

(b) by a court or tribunal in any other country of an offence which would, if committed in India, have been punishable under this Act or under any of the aforesaid sections with like imprisonment for a like term,

is within a period of five years after release from prison, again convicted of any offence punishable under this Act or under any of those sections with imprisonment for a term of two years or upwards by a court, such court may, if it thinks fit, at the time of passing the sentence of imprisonment on such person, also order that his residence, and any change of, or absence from, such residence, after release be notified according to rules made under section 20 for a period not exceeding five years from the date of expiration of that sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

(4) Any person charged with a breach of any rule referred to in sub-section (1) may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified as his residence is situated.

12. Security for good behaviour from habitual offenders.—(1)

(a) When a court convicting a person of an offence under this Act finds that he has been habitually committing, or attempting to commit, or abetting the commission of, that offence or any other offence under this Act and the court is of opinion that it is necessary or desirable to require that person to execute a bond for good behaviour, such court may at the time of passing the sentence on the person order him to execute a bond for a sum proportionate to his means with or without sureties for his good behaviour during such period not exceeding three years as it thinks fit.

(b) If the conviction is set aside on appeal or otherwise the bond so executed shall become void.

(c) An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

(2) When a Magistrate receives information from the police or otherwise that any person within the local limits of his jurisdiction habitually commits, or attempts to commit, or abets the commission of, any offence under this Act, such Magistrate may require such person to show cause why he should not be ordered to execute a bond with sureties for his good behaviour for such period not exceeding three years as the Magistrate thinks fit and thereupon the provisions of sections 112 to 126 of the Code of Criminal Procedure, 1898 (Act V of 1898) shall apply in such a case.

13. Special police officer and advisory body.—(1) There shall be for each area to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that Government for dealing with offences under this Act in that area.

(2) The special police officer shall not be below the rank of—

(a) an Assistant Commissioner of Police in the presidency towns of Madras and Calcutta;

(b) a Superintendent of Police in the presidency town of Bombay; and

(c) a Deputy Superintendent of Police elsewhere.

(3) For the efficient discharge of his functions in relation to offences under this Act the special police officer of an area may associate with him a non-official advisory body not exceeding five in number of leading social welfare workers of that area to advise him on questions of general importance regarding the working of this Act.

14. Offences to be cognizable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1838 (Act V of 1838) any offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of that Code

Provided that, notwithstanding anything contained in that Code,—

(i) arrest without warrant may be made only by the special police officer or under his direction or guidance, or subject to his prior approval,

(ii) when the special police officer requires any officer subordinate to him to arrest without warrant otherwise than in his presence any person for an offence under this Act, he shall give that subordinate officer an order in writing, specifying the person to be arrested and the offence for which the arrest is being made, and the latter officer before arresting the person shall inform him of the substance of the order and, on being required by such person, show him the order,

(iii) any police officer specially authorised by the special police officer may, if he has reason to believe that on account of delay involved in obtaining the order of the special police officer, any valuable evidence relating to any offence under this Act is likely to be destroyed or concealed, or the person who has committed or is suspected to have committed the offence is likely to escape, or if the name and address of such a person is unknown or there is reason to suspect that a false name or address has been given, arrest the person concerned without such order, but in such a case he shall report, as soon as may be, to the special police officer the arrest and the circumstances in which the arrest was made.

15. Search without warrant—(1) Notwithstanding anything contained in any other law for the time being in force, the special police officer may, for the purpose of ascertaining whether an offence punishable under this Act has been or is being committed, enter and search without a warrant any premises in which he has reason to believe that any woman or girl is living in respect of whom an offence under this Act has been or is likely to be, committed or is attempted to be committed.

(2) Before making a search under sub-section (1) the special police officer shall call upon two or more respectable inhabitants (at least one of whom shall be a woman) of the locality in which the place to be searched is situate, to attend and witness the search, and may issue an order in writing to them or any of them so to do

(3) Any person who, without reasonable cause, refuses or neglects, to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (Act XLV of 1860).

(4) The special police officer entering any premises under sub-section (1) shall be entitled to remove therefrom any girl, if in his opinion she is under the age of eighteen years and is carrying on or is being made to carry on, or attempts are being made to make her carry on, prostitution.

(5) The special police officer, after removing the girl under sub-section (4) shall forthwith produce her before the appropriate Magistrate.

(6) The special police officer and other persons taking part in, or attending, and witnessing a search or taking any lawful action in connection with the search shall not be liable to any civil or criminal proceedings against them on any ground.

16. Rescue of girl.—(1) Where a Magistrate has reason to believe, from information received from the police or otherwise, that a girl apparently under the age of eighteen years, is living, or is carrying on, or is being made to carry on prostitution, in a brothel, or any other place he may direct the special police officer to enter such brothel or other place and to remove therefrom such girl and produce her before him.

(2) The special police officer after removing the girl shall forthwith produce her before the Magistrate issuing the order.

17. Intermediate custody of girls removed under section 15 or rescued under section 16.—(1) When the special police officer removing a girl under sub-section (4) of section 15 or rescuing a girl under sub-section (1) of section 16, fails to produce her immediately before the Magistrate as required by sub-section (5) of section 15 or sub-section (2) of section 16, he shall forthwith produce her before the nearest Magistrate of any class, who shall pass such orders as he deems proper for her safe custody until she is produced before the appropriate Magistrate.

(2) When the girl is produced before the appropriate Magistrate he shall cause an enquiry to be made concerning her age, and, if satisfied that the girl is under the age of eighteen years, may, subject to the provisions of the next sub-section, make an order that such girl be detained until she attains the age of twenty-one years or for such shorter period as may be specified in the order, in a protective home or such other custody as he, for reasons to be recorded in writing, shall consider suitable:

Provided that such custody shall not be that of a person, or body of persons, of a religious persuasion different from that of the girl.

(3) In discharging his functions under sub-section (2), a Magistrate may summon a panel of five jurors, three of whom shall be women, to assist him; and may for this purpose keep a list of experienced social welfare workers, particularly lady workers, in the field of suppression of immoral traffic in women and girls.

(4) If the Magistrate agrees with the opinion of the majority of the jurors, there shall be no appeal against his order, but if he differs from their opinion, he shall refer the matter to the Sessions Judge whose decision shall be final.

18. Closure of brothels and eviction of offenders from the premises.—(1) A Magistrate may, on receipt of information from the police or otherwise, that any house, room, place or any portion thereof within a distance of two hundred yards of any public place referred to in sub-section (1) of section 7, is being run or used as a

brothel by any person, or is being used by prostitutes for carrying on their trade, issue notice on the owner, lessor or landlord of such house, room, place or portion or the agent of the owner, lessor or landlord or on the tenant, lessee, occupier of, or any other person in charge of such house, room, place, or portion, to show cause within seven days of the receipt of the notice why the same should not be attached for improper user thereof; and if, after hearing the person concerned, the Magistrate is satisfied that the house, room, place, or portion is being used as a brothel or for carrying on prostitution, then the Magistrate may pass orders—

(a) directing eviction of the occupier within seven days of the passing of the order from the house, room, place, or portion;

(b) directing that before letting it out during the period of one year immediately after the passing of the order, the owner, lessor or landlord or the agent of the owner, lessor or landlord shall obtain the previous approval of the Magistrate:

Provided that, if the Magistrate finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place or portion, he may cause the same to be restored to the owner, lessor or landlord, or the agent of the owner, lessor or landlord, with a direction that the house, room, place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper user therein.

(2) A court convicting a person of any offence under section 3 or section 7 may pass orders under sub-section (1), without further notice to such person to show cause as required in that sub-section.

(3) Orders passed by the Magistrate or court under sub-section (1) or sub-section (2) shall not be subject to appeal and shall not be stayed or set aside by the order of any court, civil or criminal, and the said orders shall cease to have validity after the expiry of one year.

(4) Notwithstanding anything contained in any other law for the time being in force, when a Magistrate passes an order under sub-section (1), or a court passes an order under sub-section (2), any lease or agreement under which the house, room, place or portion is occupied at the time shall become void and inoperative.

(5) When an owner, lessor or landlord, or the agent of such owner, lessor or landlord to whom any house, room, place or any portion thereof has been restored under the proviso to sub-section (1) fails to comply with the direction given under that proviso, he shall be deemed to have committed an offence under clause (b) of sub-section (2) of section 3 or clause (c) of sub-section (2) of section 7, as the case may be, and punished accordingly.

19. Protective homes.—(1) The State Government may in its discretion establish as many protective homes under this Act as it thinks fit and such homes, when established, shall be maintained in such manner as may be prescribed.

(2) No person or authority other than the State Government shall, after the commencement of this Act, establish or maintain any

protective home except under and in accordance with the conditions of, a licence issued under this section by the State Government.

(3) The State Government may, on application made to it in this behalf by a person or authority, issue to such person or authority a licence in the prescribed form for establishing and maintaining or as the case may be, for maintaining a protective home and a licence so issued may contain such conditions as the State Government may think fit to impose in accordance with the rules made under this Act:

Provided that a person or authority maintaining any protective home at the commencement of this Act shall be allowed a period of six months from such commencement to make an application for such licence.

(4) Before issuing a licence the State Government may require such officer or authority as it may appoint for this purpose, to make a full and complete investigation in respect of applications received in this behalf and report to it the result of such investigation and in making any such investigation the officer or authority shall follow such procedure as may be prescribed.

(5) A licence, unless sooner revoked, shall remain in force for such period as may be specified in the licence and may, on application made in this behalf at least thirty days before the date of its expiration, be renewed for a like period.

(6) Every application for the issue or renewal of a licence shall be accompanied by such fee as may be prescribed.

(7) No licence issued or renewed under this Act shall be transferable.

(8) Where any person or authority to whom a licence has been granted under this Act or any agent or servant of such person or authority commits a breach of any of the conditions thereof or any of the provisions of this Act or of any of the rules made under this Act, or where the State Government is not satisfied with the condition, management or superintendence of any protective home the State Government may, without prejudice to any other penalty which may have been incurred under this Act, for reasons to be recorded revoke the licence by order in writing:

Provided that no such order shall be made until an opportunity is given to the holder of the licence to show cause why the licence shall not be revoked.

(9) Where a licence in respect of a protective home has been revoked under the foregoing sub-section such protective home shall cease to function from the date of such revocation.

(10) Subject to any rules that may be made in this behalf, the State Government may also vary or amend any licence issued or renewed under this Act.

(11) Whoever establishes or maintains a protective home except in accordance with the provisions of this section, shall be punishable in the case of a first offence with fine which may extend to two hundred rupees and in the case of second or subsequent offence with

imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

20. Trials.—No court inferior to that of a Magistrate as defined in clause (c) of section 2 shall try any offence under section 3, section 4, section 5, section 6, section 7 or section 8.

21. Power to make rules.—(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for—

(a) the notification of any place as a public place;

(b) the placing in custody of women and girls released under sub-section (1) of section 10 or for whose safe custody orders have been passed under sub-section (1) of section 17 and their maintenance;

(c) the detention of women and girls under sub-section (2) of section 10 and sub-section (2) of section 17, and their maintenance;

(d) the carrying out of the provisions of section 11 regarding notification of residence or change of or absence from residence by released convicts;

(e) the delegation of authority to appoint the special police officer under sub-section (1) of section 13;

(f) the carrying into effect of the provisions of section 18;

(g) (i) the establishment, maintenance, management and superintendence of protective homes and the appointment, powers and duties of persons employed in such homes;

(ii) the form in which an application for a licence may be made and the particulars to be contained in such application;

(iii) the procedure for the issue or renewal of a licence, the time within which such licence shall be issued or renewed and the procedure to be followed in making a full and complete investigation in respect of an application for a licence;

(iv) the form of a licence and the conditions to be specified therein;

(v) the fees to be levied in respect of a licence;

(vi) the manner in which the accounts of a protective home shall be maintained and audited;

(vii) the maintenance of registers and statements by a licensee and the form of such registers and statements;

(viii) the care, treatment, maintenance, training, instruction, control and discipline of the inmates of protective homes;

(ix) the visits to and communication with such inmates;

(x) the temporary detention of women and girls sentenced to detention in protective homes until arrangements are made for sending them to such homes;

(xi) the transfer of a woman or girl from one protective home to another;

(xii) the transfer from a protective home to a prison of a woman or girl found to be incorrigible or exercising bad influence upon other inmates of the protective home and the period of her detention in such prison;

(xiii) the transfer to a protective home of women or girls sentenced under section 7 or section 8 and the period of their detention in such home;

(xiv) the discharge of inmates from a protective home either absolutely or subject to conditions, and their arrest in the event of breach of such conditions;

(xv) the grant of permission to inmates to absent themselves for short periods;

(xvi) the inspection of protective homes and other institutions in which women and girls may be kept, detained and maintained.

(h) any other matter which has to be, or may be, prescribed.

(3) In making any rule under clause (e) or clause (h) of subsection (2) the State Government may provide that a breach thereof shall be punishable with fine which may extend to one hundred rupees.

22. Act not to be in derogation of certain other Acts.—Nothing in this Act shall be construed to be in derogation of the provisions of the Reformatory Schools Act, 1897 (VIII of 1897), or any State Act enacted in modification of the said Act or otherwise, relating to juvenile offenders.

23. Repeal and savings.—(1) As from the date of the coming into force in any State of the provisions other than section 1 of this Act, any law in force in that State corresponding to the said provisions shall stand repealed.

(2) Notwithstanding the repeal by this Act of any corresponding law anything done or any action taken (including any direction given, any register, rule or order made, any restriction imposed) under the provisions of such corresponding law shall in so far as such thing or action is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the provisions of this Act as if the said provisions were in force when such thing was done or such action was taken and shall continue in force accordingly until superseded by anything done or any action taken under this Act.

STATEMENT OF OBJECTS AND REASONS

In 1950 the Government of India ratified an international convention for the suppression of traffic in persons and of the exploitation of the prostitution of others. Under article 23 of the Constitution,

traffic in human beings is prohibited and any contravention of the prohibition is an offence punishable by law. Under article 35, such a law has to be passed by Parliament, as soon as may be, after the commencement of the Constitution.

2. Legislation on the subject of suppression of immoral traffic does exist in a few States but the laws are neither uniform nor do they go far enough. In the remaining States there is no law on the subject at all.

3. In the circumstances, it is necessary and desirable that a Central law should be passed which will not only secure uniformity but also would be sufficiently deterrent for the purpose. Hence the present Bill. The Bill is generally on the usual lines with penalties sufficiently deterrent for the purpose; but a special feature of the Bill is that it provides that no person or authority other than the State Governments shall establish or maintain any protective home except under a licence issued by the State Governments. This will check the establishment of homes which are really dens for prostitution.

K. N. KATJU.

NEW DELHI;

The 22nd October, 1954.

FINANCIAL MEMORANDUM

Clause 13 of the Bill contemplates the appointment by the State Governments of special police officers of the rank of Deputy Superintendent of Police for dealing with the offences under the Bill; some staff may be required for the special police officers. Clause 19 of the Bill empowers a State Government to establish in its discretion as many protective homes within the State as it thinks fit for the reception, maintenance and training of women and girls rescued from brothels. As the extent and gravity of the problems arising out of the evil of prostitution are likely to vary from State to State, it is not possible at this stage to frame an accurate estimate of the number of special police officers and the staff that will have to be appointed and the number of protective homes that may have to be established in each State. In some States, e.g., Tripura, Manipur, Kutch and Andaman and Nicobar Islands, the problem is not acute and there may not be any expenditure either on staff or on protective homes. In some other States only adjustment of the existing staff and designation of certain Deputy Superintendents of Police as "special police officers" for the purpose of this Act may be required and no new staff would have to be recruited. The provision for establishment of protective homes by the State Governments is permissive and not obligatory. To what extent extra staff and protective homes under State management would be required and the cost involved can be properly determined only after the problems referred to above have been surveyed in each State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The matters set out in clause 21 of the Bill on which rules may be made are of an administrative kind and it is not necessary to burden the Bill itself with detailed provisions relating thereto. The subjects on which rules may be made relate, *inter alia*, to the manner in which women and girls may be detained and maintained in protective homes; the manner in which released convicts shall keep their changes of address notified to the proper authority; the licensing of protective homes and the regulation of all matters incidental thereto in order to ensure that protective homes are run on proper lines; the transfer of detained persons from one home to another and so on. Clause 21(2) (a) authorises the State Governments by rules to notify any place of a kind similar to any of the public places specified in clause 7(1) of the Bill as a public place so as to attract the provisions of that clause. It will thus be seen from an enumeration of the matters on which rules may be made that the rule-making power is normal and is not of an exceptional character.

M. N. KAUL,
Secretary.

